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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

IN RE ZOOM VIDEO COMMUNICATIONS,
INC. PRIVACY LITIGATION

This Document Relates To: All Actions

Master File No. 5:20-cv-02155-LHK

**ADMINISTRATIVE MOTION TO
CLARIFY CASE STATUS OR TO
CONSOLIDATE ACTIONS**

TODD HURVITZ, individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

FACEBOOK, et al.,

Defendants.

Case No. 4:20-cv-03258-JD

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, pursuant to Civil Local Rule 7-11, Defendants Facebook, Inc. and LinkedIn Corporation in *Hurvitz v. Facebook, et al.*, No. 4:20-cv-03258-JD, submit this Administrative Motion seeking confirmation that *Hurvitz* is subject to the May 28, 2020 Order to Consolidate Actions and Set Scheduling Deadlines (“the Consolidation Order”). *See Cullen v. Zoom Video Commc’ns, Inc.*, Case No. 5:20-cv-02155-LHK, ECF No. 62 (N.D. Cal. May 28, 2020).¹ In the alternative, Facebook and LinkedIn move to consolidate *Hurvitz* with the actions already consolidated under the caption *In re Zoom Video Communications, Inc. Privacy Litigation*, Master File No. 5:20-cv-02155-LHK, pursuant to Paragraph 4 of the Consolidation Order.

I. BACKGROUND

On March 30, 2020, Robert Cullen filed a class action complaint against Zoom Video Communications, Inc. (“Zoom”) alleging that Zoom failed to protect its users’ information by disclosing it to third parties, including Facebook. *See Cullen*, ECF No. 1. Since Cullen filed his complaint, at least 16 other similar actions have been filed, including *Hurvitz*. So far, this Court has determined that 15 of these actions are related, including *Hurvitz*. *See Cullen*, Orders Granting Administrative Motions to Consider Whether Cases Should Be Related, ECF Nos. 61 (May 28, 2020); 56 (May 20, 2020); 51, 52 (May 18, 2020); 43, 44 (May 7, 2020); Order Relating Cases, ECF No. 54 (May 20, 2020); Order Granting Stipulation to Relate Cases, ECF No. 28 (Apr. 24, 2020).

Specifically, on May 28, 2020, the Court found that *Hurvitz* and *Cullen* “concern substantially the same parties, property, transactions or events,” granted the Administrative Motion, and ordered that *Hurvitz* be related to *Cullen* and be reassigned accordingly. ECF No. 61. Following its order relating *Hurvitz*, the Court then ordered per stipulation the pre-trial consolidation of enumerated actions “and any other action arising out of the same or similar

¹ Citations to *Cullen* refer to the docket in No. 5:20-cv-02155-LHK. Citations to *Hurvitz* refer to the docket in No. 4:20-cv-03258-JD.

operative facts now pending” in the Northern District. ECF No. 62 at 7, ¶ 1 (“Consolidation Order”).

After the Court issued these orders relating *Hurvitz* and consolidating cases, counsel for *Hurvitz* emailed counsel for Facebook and LinkedIn to schedule a Rule 26(f) conference. *See* Declaration of Emily Johnson Henn in Support of Administrative Motion to Clarify Case Status or to Consolidate Actions at ¶¶ 2-4. In response to *Hurvitz*’s counsel, counsel for Facebook, joined by counsel for LinkedIn, stated their understanding that the Court’s Consolidation Order applied to *Hurvitz*, and it was therefore appropriate to await the consolidated amended complaint before conducting the Rule 26(f) conference. *See id.* at ¶ 5. Counsel for *Hurvitz* was asked to confirm by 2:00 PM PT whether *Hurvitz* agreed that the Consolidation Order applied by its terms to the instant action. *See id.* at ¶ 6. Counsel for *Hurvitz* disagreed that *Hurvitz* has been or should be consolidated. *See id.* at ¶¶ 6-7.

As a result, Facebook and LinkedIn submit this Administrative Motion to confirm that *Hurvitz* is subject to the Consolidation Order or, in the alternative, to move for consolidation.

II. ARGUMENT

Federal Rule of Civil Procedure 42(a) states that a court can consolidate actions that “involve a common question of law or fact.” Paragraph 1 of the Consolidation Order provides that “[t]he *Cullen, Taylor, Johnston, Gens, Kondrat, Lawton, Jimenez, Hartmann, Henry, Greenbaum, Simins, Buxbaum, Kirpekar, and Saint Paulus* actions currently pending before this Court **and any other action arising out of the same or similar operative facts now pending** or hereafter filed in, removed to, or transferred to this District **shall be consolidated for pre-trial purposes** pursuant to Fed. R. Civ. P. 42(a) before the Honorable Lucy H. Koh (hereafter “the Consolidated Action”).” *See* Consolidation Order, ECF No. 62 at 7, ¶ 1 (emphasis added). Paragraph 4 contemplates that actions “**subsequently** filed, transferred or removed to this Court that arise[] out of the same or similar operative facts” will be consolidated, subject to the Court’s approval. *Id.* at 8, ¶ 4 (emphasis added).

Under the plain language of Paragraph 1, the Consolidation Order applies to *Hurvitz*. *Hurvitz* arises out of the “same or similar facts” as the Consolidated Action, as confirmed by the

1 Court's order relating *Hurvitz* to *Cullen*. See ECF No. 61 (finding that *Hurvitz* and *Cullen*
 2 "concern substantially the same parties, property, transactions or events"). *Hurvitz* was pending
 3 in the Northern District and had already been related to *Cullen* when the Court entered the
 4 Consolidation Order. See ECF No. 61 (order relating cases); ECF No. 62 (Consolidation Order).
 5 As a result, *Hurvitz* "shall be consolidated for pretrial purposes" with the Consolidated Action.
 6 See Consolidation Order at 7, ¶ 1. The Court should therefore grant this Administrative Motion
 7 confirming that *Hurvitz* is subject to the Consolidation Order and that Facebook and LinkedIn
 8 need not respond to the *Hurvitz* First Amended Complaint. See Consolidation Order at 9, ¶ 6(c)
 9 ("Zoom and any additional defendants named in future Related Actions need not file a response
 10 to the complaint in each Related Action and instead will answer, move or otherwise respond to
 11 the Consolidated Complaint no later than forty-five (45) days following service of the
 12 Consolidated Complaint.").

13 In the alternative, and in the event that Paragraph 1 of the Consolidation Order somehow
 14 does not apply to *Hurvitz*, the Court should order that *Hurvitz* be consolidated with the
 15 Consolidated Action pursuant to Paragraph 4 of the Consolidation Order. As Facebook and
 16 LinkedIn explained in their Administrative Motion to Consider Whether Cases Should Be
 17 Related, *Hurvitz* and the cases now comprising the Consolidated Action concern common
 18 questions of fact, namely the alleged disclosure of the same Zoom user information to third
 19 parties including Facebook and LinkedIn. See ECF No. 53 at 3-4 (discussing similar allegations
 20 related to user device information). They also concern similar questions of law, including
 21 whether Zoom's, Facebook's, or LinkedIn's privacy policies disclosed the alleged information
 22 sharing and whether users have a reasonable expectation of privacy in the types of device data at
 23 issue. See *id.* at 4. Consolidating *Hurvitz* with the Consolidated Action would thus conserve
 24 judicial and party resources by eliminating duplicative discovery and streamlining motion
 25 practice.

26 **III. CONCLUSION**

27 Pursuant to Paragraph 1 of the Consolidation Order, *Hurvitz* "shall be consolidated for
 28 pretrial purposes" with the Consolidated Action, and the Court should grant this Administrative

1 Motion so confirming. In the alternative, the Court should order that *Hurvitz* be consolidated
2 with the Consolidated Action pursuant to Paragraph 4 of the Consolidation Order because the
3 actions concern common questions of fact and law.

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5 Respectfully submitted,

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7 Dated: June 1, 2020

COVINGTON & BURLING LLP

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9 By: /s/ Emily Johnson Henn

Emily Johnson Henn

10 Attorneys for Defendant Facebook, Inc.

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12 Dated: June 1, 2020

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FILER'S ATTESTATION

I, Emily Johnson Henn, am the ECF user whose identification and password are being used to file this Administrative Motion to Consider Whether Cases Should Be Related. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that all other signatories listed in the Motion concur in this filing.

DATED: June 1, 2020

COVINGTON & BURLING LLP

By: /s/ Emily Johnson Henn
Emily Johnson Henn

Attorneys for Defendant Facebook, Inc.